

FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

California Department of Industrial Relations



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I. Executive Summary

The primary purpose of this report is to assess the California State Plan's progress in Fiscal Year (FY) 2022 in resolving outstanding findings identified in the FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

The California State Plan is the largest in the nation, with multiple entities providing occupational safety and health and whistleblower protection services. These entities work in concert to deliver a program that is innovative and extensive. In FY 2022, California was a pioneer in the prevention of COVID-19 in the workplace, addressing heat injury and illness in both indoor and outdoor environments, and establishing and communicating requirements for employers to ensure their employees' safety when confronted with many devastating wildfires and the impacts on air quality. Further, 70% of 70 program performance plan goals were achieved while recovering from the impacts of the COVID-19 pandemic and are addressed in its FY 2022 State OSHA Annual Report (SOAR).

The California State Plan continued to improve its program performance as staffing shortages affected their ability to respond timely to complaints and schedule programmed inspections of high-hazard workplaces. Overall violations per inspection were higher than the national average, however the number of serious citations issued remains a longstanding concern at a significantly lower rate than the Further Review Level (FRL). Lapse times for issuance of citations continued to be higher than the national average. Commercial diving and fall protection in residential construction standards are not at least as effective as the federal requirements. The Division of Labor Standards Enforcement had not adopted a Whistleblower Investigation Manual by the end of FY 2022.

The California State Plan made some progress to address the previous seven findings and two observations from the FY 2021 Comprehensive FAME Report. In FY 2022, all findings and observations were continued. There were no new findings or observations. Corrective actions for one finding and two observations will be a focus of next year's on-site case file review as part of the FY 2023 comprehensive FAME.

II. State Plan Background

The Department of Industrial Relations (DIR) administers the California State Plan and is comprised of several divisions. Katie Hagen was the Director of DIR and State Plan Designee for the evaluation period.

The Division of Occupational Safety and Health (DOSH), more commonly known as Cal/OSHA, covers a myriad of responsibilities associated with occupational safety and health including enforcement of regulations, compliance assistance, outreach, health standards development, and enforcement and management of requirements of associated programs, such as pressure vessels, amusement rides, and elevators. Jeff Killip was appointed as the Cal/OSHA Chief on January 28, 2022. Chief Killip was supported by Debra Lee, Deputy Chief for Field Enforcement; Corey

Friedman, Assistant to the Chief for Policy and Program Administration; Dan Lucido, Chief Counsel; Carl Paganelli, Deputy Chief of Engineering, Consultation Services, and Process Safety Management; Brandon Hart, Training, Publications, and Outreach Unit Manager; Suzanne Reinfrank, Staff Services Manager; and Eric Berg, Deputy Chief for Research and Standards. Eugene Glendenning started the year as the Acting Consultation Program Manager and was appointed to the position on July 8, 2022.

The California Occupational Safety and Health Standards Board (OSHSB) promulgates occupational safety and health standards for the State of California. The Board consists of seven members, who were appointed by the governor and led by David Thomas, Chairperson, and Christina Shupe, Executive Officer.

The California Occupational Safety and Health Appeals Board (OSHAB) adjudicates contested cases. The Board was comprised of three members; Ed Lowry, Chairperson; Judith Freyman, Management Member; and Marvin Kropke, Labor Member. Patty Hapgood was the Acting Executive Officer.

The Department of Labor Standards Enforcement (DLSE) investigates allegations of retaliation. The Labor Commissioner was Lilia Garcia-Brower and the Assistant Chief was Patti Huber. The Regional Manager was Victor Lao. The Senior Deputy was Kimberly Kaufman, who oversaw the work of Deputy Labor Commissioners dedicated to Occupational Safety Health (OSH) Act Section 11(c) retaliation investigations and left the role in June 2022.

There were 28 enforcement offices (known as district offices), with 17 of these offices separated into four geographical regions, each headed by a regional manager. Additionally, there were two High Hazard Unit offices (HHUs), one located in Oakland (HHU North) and another in Santa Ana (HHU South), which conducted programmed inspections of employers in high hazard industries. The Process Safety Management (PSM) Unit had four offices, two located in Concord (PSM North) and two located in Santa Ana (PSM South). There were three Mining and Tunneling Unit offices with a mandate to inspect tunnels under construction. There were two Labor Enforcement Task Force (LETF) Unit offices, one located in Oakland (LETF North) and another in Santa Ana (LETF South), which targeted employers in the underground economy in partnership with other state agencies. The Crane Unit and a Pressure Vessel Unit had staff co-located in the district offices and assisted compliance safety and health officers (CSHOs) by providing technical expertise for cranes, hoisting equipment, and pressure vessels.

In FY 2022, the initial federal base award to fund the 23(g) program was \$28,545,700. California matched the federal funds and contributed an additional \$37,972,027 in 100% state funds, bringing the total award to \$95,063,427. The State Plan matched an amendment increase of \$439,000 and reduced \$439,000 in 100% state funds, increasing the total federal and state funds to \$95,502,427.

DIR transitioned to the Financial Information System for California (FI\$Cal) on July 1, 2018, and the system conversion resulted in requests for extensions to submit financial closeout reports

from FY 2018 through FY 2021. The FY 2022 financial closeout report was submitted timely, within 90 days after the end of the grant's performance period. The total expenses were \$95,611,752. A financial monitoring review was conducted in August 2021. There were 11 findings that are awaiting verification and will be addressed in the FY 2023 financial monitoring review.

In addition to the 23(g) grant, California received \$7,500,000 in American Rescue Plan (ARP) federal funds for activities aimed at protecting workers during the COVID-19 pandemic and post pandemic recovery for the performance period of October 1, 2020, through September 30, 2023. California matched the federal funds, bringing the total federal and state funds to \$15,000,000. Quarterly ARP reports were submitted timely, and in FY 2022 California spent \$10,915,796, including \$5,457,898 in federal funds.

State and local government consultation services were provided under the 23(g) grant, while private sector consultation was provided under the 21(d) Cooperative Agreement. The private sector consultation program is evaluated separately in the FY 2022 Regional Annual Consultation Evaluation Report (RACER).

Overall, Cal/OSHA's enforcement program continued its recovery from the deepest depths of the pandemic, and excelled in conducting 6,452 overall inspections, 12% higher than their FY 2022 goal of 5,775. Cal/OSHA also addressed more than 9,300 valid complaints; 15% of the entire number received nationwide.

New Issues

The Department of Industrial Relations continues to experience low staffing levels in its units associated with the 23(g) grant. At the end of September 2022, Cal/OSHA reported an overall vacancy rate of 36%. A large portion of the unfilled positions were in enforcement staff. One complication that should be noted was that the 2022-2023 budget for the state, enacted in July 2022, authorized 37 new positions in enforcement alone. The influx of new positions will be a benefit to the agency once staffed; however, they currently inflate the vacancy rate of the agency. Positions were also added in OSHSB, OSHAB and DLSE.

The California State Plan made progress in hiring 113 employees in FY 2022 and is seeking to capitalize on its successes in future years. Cal/OSHA continues to battle attrition and slow hiring practices in the filling of its ranks, particularly enforcement. Cal/OSHA maintains a [public website](#) regarding its recruitment and hiring and continues to engage in outreach to encourage qualified applicants to its job openings.

Staffing has impacted the efficacy of the California State Plan. While we recognize efforts to reach program performance plan goals, several effects of the high vacancy rate were noted while monitoring in FY 2022. In quarterly meeting discussions, staffing was mentioned as a cause for response time to initiate inspections and investigations of complaints above the FRL, which is an outstanding FAME finding. In the SOAR, Cal/OSHA noted that it did not achieve its goal of district

offices running a weekly report for tracking unprogrammed activities and that improvements in this area were expected as more office managers and clerical staff were brought on. Cal/OSHA did not achieve some of its goals in process safety management, due to retasking staff, while many inspectors were ill with COVID-19. Just 18.5% of Cal/OSHA's inspections were programmed, as compared to a national average of 40%. These numbers are influenced by staffing, as limited resources need to respond to unprogrammed work like fatalities, injuries, and complaints per state mandates. A high percentage of unprogrammed work means that Cal/OSHA cannot conduct planned inspections of high hazard employers at the national average rate. Staffing levels will continue to be a topic for monitoring efforts in FY 2023.

The California State Plan continued to focus heavy efforts on addressing COVID-19 and its prevention in the workplace. The Emergency Temporary Standard was re-adopted twice in FY 2022 with revised requirements as OSHSB worked to develop a permanent standard. Employers and workers were educated about the hazards and controls of COVID-19 through webpages, videos, and documents. Finally, Cal/OSHA addressed nearly 3,000 complaints, about 20% of the overall complaint volume, and opened over 900 inspections related to COVID-19, resulting in approximately 850 violations related to COVID-19 hazards.

There were several special initiatives in FY 2022. Record-breaking temperatures emphasized the importance of Cal/OSHA's continued efforts to address heat injury and illness in the state. More than 250 high heat inspections were conducted, as well as a continued a media campaign that included multilingual outreach via billboards, television, radio, and other postings. Cal/OSHA further broadened their efforts to include workers exposed to high temperatures in indoor settings including restaurants, warehouses, and manufacturing environments. Outreach efforts were geared to generating awareness of employer requirements surrounding wildfire smoke and air quality impacts. The Labor Enforcement Task Force began an initiative to address labor issues at publicly funded construction sites, a continuation of their efforts to combat the underground economy and ensure safe and fair labor practices for all employees.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

- State Activity Mandated Measures (SAMM) Report (Appendix D dated 11/14/2022)
- State Information Report (SIR, dated 11/14/2022)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan (APP)

- State Plan 23(g) Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Whistleblower Application in the OSHA IT Support System (OITSS)
- State Plan Application (SPA)
- OSHA Information System (OIS) reports

B. Findings and Observations

Findings (Status of Previous and New Items)

The California State Plan made progress to address the previous seven findings and two observations from the FY 2021 Comprehensive FAME Report. This follow-up FAME report contains seven findings and two observations. All findings and observations were continued from the 2021 report. There were no new findings or observations. Appendix A describes the continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2021 finding and recommendation in detail.

Completed Findings

No findings were completed in FY 2022.

Continued Findings

Finding FY 2022-01 (FY 2021-01): The average time to initiate an inspection for formal serious complaints was 12.54 working days and non-serious complaints was 20.53 calendar days, which exceeded the negotiated measure of 3 and 14 days, respectively.

Status: In FY 2022, the average time to initiate an inspection of a formal serious complaint was 8.6 working days (SAMM 1a) and the average time to initiate an investigation of a non-serious complaint was 18.92 working days (SAMM 2a), which exceeded the negotiated measures of 3 and 14 days, respectively. The effects of loss of staff due to attrition, slow hiring practices to fill vacant positions, increased workload due to the COVID-19 pandemic, and the shifting of staff to respond to shortages exacerbated by illnesses in the agency's workforce impacted Cal/OSHA's ability to respond to complaints in the specified timeframes. It was noted that Cal/OSHA made quarter over quarter progress in decreasing response time to complaints. This finding remains open.

Finding FY 2022-02 (FY 2021-02): In the fatality and catastrophe case files reviewed in FY 2021, 12 of 59 (20%) did not contain an OSHA 170 Fatality and Catastrophe Investigation Summary.

Status: Cal/OSHA is in the process of updating policy and procedures to ensure that Regional Managers sign all Fatality and Catastrophe Investigation Summaries and that it is included in the

case files. This finding remains open and will be a focus of the onsite case file review as part of the FY 2023 Comprehensive FAME.

Finding FY 2022-03 (FY 2021-03): The average number of serious, willful, repeat, or unclassified (SWRU) violations issued was 0.64 (SAMM 5a) violations per inspection. This was below the lower end of the FRL range (1.42 violations per inspection).

Status: The FRL for average number of SWRU violations per inspection with violations is +/- 20% of the three-year national average which equals a range of 1.42 to 2.12 (SAMM 5a). Cal/OSHA cited 0.64 SWRU violations per inspection with violations, less than half of the lower value of the FRL range. The lower number of SWRU citations has been a finding in the California FAME report since as early as 2007. Cal/OSHA issues a higher average total number of citations (2.90) than the three-year national average (2.66). Data from OIS showed that it is for general violation citations, which is counted as other than serious and used in 64% of citations used in FY 2022. This finding remains open.

Finding FY 2022-04 (FY 2021-04): Cal/OSHA's citation lapse time was 89.78 days for safety inspections and 119.03 days (SAMM 11) for health inspections. These are above the high end of the FRL ranges of 62.9 days for safety inspections and 79.32 days for health inspections.

Status: The FRL SAMM 11, average lapse time, is +/- 20% of the three-year national average. For safety inspections, the three-year national average was 54.48 days and the FRL range was 43.66 to 65.50 days. Cal/OSHA's average lapse time for safety inspections was 76.67 days, above the high end of the FRL range. For health inspections, the three-year national average was 69.03 days and the FRL range was 55.22 to 82.84 days. Cal/OSHA averaged 78.09 days and is within the high end of the FRL range. High lapse times have been a finding in the California FAME report since 2013 and can be attributed to two factors. First, the California State Plan has a statutory requirement that employers be notified of the issuance of any serious violations 15 days in advance of the issuance of the citation and given an opportunity to respond. This is known as the 1BY process and was applicable to 1,719 of the 4,530 inspections with violations. Additionally, SAMM 11 is designed to be a measure of how long before a hazard is corrected by an employer. Without a citation, no required abatement date is provided, and a hazard could persist in the workplace. Cal/OSHA has raised that a large proportion of the violations it identified are corrected by employers prior to the issuance of a citation, also known as "corrected during inspection" which was nearly 60% of the violations issued in FY 2022. Cal/OSHA has contended that the difference in days between the opening conference and the abatement dates would be a more effective measure. This finding remains open.

Finding FY 2022-05 (FY 2021-05): OSHSB's regulations for residential construction fall protection are not at least as effective (ALAE) as OSHA's regulations as required by 29 CFR 1953.5(a).

Status: In FY 2022, the Department of Finance approved the fiscal analysis based on the federal and state agreement proposed in 2016. OSHSB held advisory committee meetings, updated the language, and are processing documents for the Labor and Workforce Development Agency and

the Office of Administrative Law approval to issue a notice of publication for rulemaking in the California Regulatory Notice Register. This has been a FAME finding since 2015 and will remain open.

Finding FY 2022-06 (FY 2021-06): State Plan-initiated rulemaking promulgated standards on commercial diving are not ALAE as OSHA's standard.

Status: There has been no change to the California standards on commercial diving. Several discussions were held with OSHSB regarding the definition of technical diving and some exceptions that are not at least as effective as the federal commercial diving standards, but rulemaking to address these items has not been initiated. This finding remains open.

Finding FY 2022-07 (FY 2021-07): DLSE does not have an approved whistleblower investigations manual to ensure that its policies and procedures are ALAE as OSHA's.

Status: DLSE drafted a whistleblower manual governing the review and processing of workplace retaliation to provide clear and updated policies. The manual is pending DLSE's legal team review. An approved whistleblower investigations manual has not been adopted since 2013. This finding remains open.

New Findings

There were no new findings identified in FY 2022.

Observations

Continued FY 2021 Observations

Observation FY 2022-OB-01 (FY 2021-OB-01): Retaliation case files lacked the required documentation, such as final signatures on settlement agreements, correspondence between DLSE and the parties, evidence of review by a supervisor, letters of designation, complaint summaries, interview summaries, rebuttal interviews, medical information not protected, notification of dual file right or other documents required to be in the retaliation case file.

Status: A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year's on-site case file review during the FY 2023 comprehensive FAME. This observation will be continued.

Observation FY 2022-OB-02 (FY 2021-OB-02): There is no clear evidence that DLSE investigates retaliation for reporting workplace injuries and illnesses. Instead DLSE refers the complainants to the Division of Workers' Compensation (DWC).

Status: DLSE developed a flow chart to ensure that when California workers filed claims with DLSE for employer retaliation for reporting workplace injuries and illnesses, these claims were

filed, screened, docketed, and investigated by DLSE and that DLSE referrals to DWC were only made in applicable cases. A case file review is necessary to gather the facts needed to evaluate the extent of DLSE's progress on this finding. This finding will be a focus of next year's on-site case file review during the FY 2023 comprehensive FAME. This observation will be continued.

C. State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon FRL, which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2022 SAMM Report and includes the FRLs for each measure.

It should be noted that OSHA is in the final stages of transitioning from the Whistleblower Application in the OSHA IT Support System (OITSS), a legacy data system, to the Whistleblower module in OIS, a modern data system. For FY 2022, a portion of the State Plan whistleblower data was recorded OITSS, and a portion was captured in OIS. OSHA encountered challenges in combining the report that generates SAMM 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in their evaluation of the State Plans whistleblower programs for FY 2022.

The California State Plan was outside the FRL on the following SAMMs:

SAMM 5b – Average Number of Violations per Inspection with Violations by Violation Type (Other)

Discussion of State Plan Data and FRL: The FRL for average number of violations per inspection with violations by violation type (other) is +/- 20% of the three-year national average of 0.90 which equals a range of 0.72 to 1.08. Cal/OSHA's average number of other violations was above the FRL range at 2.26 and warranted a closer look at the situation.

Explanation: The higher-than-average other violations per inspection was most likely due to Cal/OSHA's issuance of general violations in 64% of citations issued in FY 2022. General violation citations are counted in the other-than-serious category under SAMM 5b. OSHA will continue to monitor this at quarterly meetings.

SAMM 6 – Percent of Total Inspections in State and Local Government Workplaces

Discussion of State Plan Data and FRL: The FRL for SAMM 6, percent of total inspections in state and local government workplaces, is +/- 5% of the planned 300 (5.19%) inspections in the 23(g) grant application. Cal/OSHA conducted 417 (6.46%) inspections of public sector workplaces, 39% more than their goal, and was above the FRL range of 4.94% to 5.45%.

Explanation: The higher number of state and local government workplace inspections was largely driven by unprogrammed activity, with Cal/OSHA receiving and inspecting a higher

number of complaints than anticipated. Many of these complaints were centered around COVID-19 and associated hazards, as the California State Plan continued to address concerns with the ongoing pandemic and deviations from promulgated standards on controlling hazards associated with the virus in the workplace. The increase did not detract from Cal/OSHA's inspections of private sector workplaces, covered in SAMM 7.

SAMM 7 – Planned v. Actual Inspections

Discussion of State Plan Data and FRL: The FRL for SAMM 7, planned versus actual number of inspections, is +/- 5% of the planned number of safety (SAMM 7a) and health (SAMM 7b) inspections in the 23(g) grant application. For FY 2022, Cal/OSHA planned to conduct 4,475 safety inspections and 1,300 health inspections for a total of 5,775 inspections. Cal/OSHA conducted 4,827 safety inspections (108% of goal, FRL range of 4,251.25 to 4,698.75) and 1,625 health inspections (125% of goal, FRL range of 1,235 to 1,365).

Explanation: Cal/OSHA continued to recover from the deepest effects of the COVID-19 pandemic, conducting inspections at a greater number of employers than anticipated. Health inspections exceeded pre-pandemic levels, which averaged about 1,350 per year from 2016-2019. Safety inspections were below the average of approximately 6,400 over the same period. Overall, the California State Plan is continuing to recover from the staffing impacts exacerbated by the pandemic and is on an upward trend in total inspection numbers.

SAMM 8 – Average Current Serious Penalty in Private Sector

Discussion of State Plan Data and FRL: The FRL for SAMM 8, average current serious penalty in private sector is +/- 25% of the three-year national average of \$3,259.35 for all employers for a range of \$2,444.51 to \$4,074.19. Cal/OSHA averaged \$8,422.98 in current serious penalty and was above the upper end of the FRL range. This SAMM is further broken down by employer size and the average current serious penalty for each employer size segment was significantly above 125% of the three-year national average (SAMM 8a, 8b, 8c, 8d).

Explanation: The California State Plan's use of higher penalties was designed to have a deterrent effect.

SAMM 9 – Percent In-Compliance

Discussion of State Plan Data and FRL: The FRL for SAMM 9, percent in-compliance, is +/- 25% of the three-year national average. For safety inspections the three-year national average was 32.25% and the FRL range was 25.80% to 38.70%. For health inspections the three-year national average was 44.42% and the FRL range was 35.54% to 53.30%. Cal/OSHA's in-compliance rate was 21.95% for safety inspections and 32.01% for health inspections, both were below the lower limit of the FRL range.

Explanation: The low in-compliance rate indicates that Cal/OSHA inspectors were effective in identifying hazardous conditions during inspections of workplaces and that worksites were targeted efficiently.

SAMM 10 – Percent of Work-related Fatalities Responded to in One Workday

Discussion of State Plan Data and FRL: The FRL for SAMM 10, percent of work-related fatalities responded to in one workday, is fixed at 100%. In FY 2022, Cal/OSHA responded to 87.93% of fatalities within one workday, below the FRL and the national average of 95.38%.

Explanation: COVID-19 fatalities affected Cal/OSHA's ability to respond timely, as often additional information was needed to determine the work-related nature of the case. Cal/OSHA improved the response throughout the year and in the fourth quarter of FY 2022 responded to 92.11% of fatalities within one workday, as compared to the national average of 94.23%. Cal/OSHA headquarters continues to review and address any cases to ensure response time is timely.

SAMM 12 – Percent Penalty Retained

Discussion of State Plan Data and FRL: The FRL for SAMM 12, percent penalty retained, is +/- 15% of the three-year national average of 69.97% for a range of 59.47% to 80.47%. In FY 2022, Cal/OSHA retained 92.84% of penalties, above the upper end of the FRL range.

Explanation: A large proportion of Cal/OSHA's citations were contested and SAMM 12 only captures uncontested cases for private sector employers. In FY 2022, 44.8% of the violations and 72% of penalty amounts issued were contested. California retained 65.8% of the penalties for cases closed (SIR 7), which is slightly lower than the national average of 69.5%. Cal/OSHA's high penalty retention rate for uncontested cases is offset by its high contest rate and resultant penalties retained after contest. The ultimate result is that monetary penalties assessed by Cal/OSHA are in line with the national averages.

SAMM 13 – Percent of Initial Inspections with Worker Walk-around Representation or Worker Interview

Discussion of State Plan Data and FRL: The FRL for SAMM 13, percent of initial inspections with worker walk-around representation or worker interview, is fixed at 100%. In FY 2022, employees were included in 99.97% of initial inspections, above the national average of 96.98%.

Explanation: While Cal/OSHA was slightly below the FRL for SAMM 13, it exceeded the national average for the measure. The small percentage of inspections that did not contain employee representation was due to oversights by new compliance officers.

SAMM 17 – Percent of Enforcement Presence

Discussion of State Plan data and FRL: The FRL for this metric was +/- 25% of the three-year national average of 1.64%, which equaled a range of 1.23% to 2.05%. Cal/OSHA's enforcement presence was at 0.87%.

Explanation: The percent of enforcement presence describes the number of safety and health inspections conducted compared to the number of employer establishments in the state. Cal/OSHA's enforcement presence was below the lower end of the FRL range, which means that they reached fewer employers with enforcement activity than the three-year national average.



Appendix A – New and Continued Findings and Recommendations

FY 2022 California Division of Occupational Safety and Health Follow-up FAME Report

FY 2022-#	Finding	Recommendation	FY 2021-# or FY 2021-OB-#
FY 2022-01	The average time to initiate an inspection for formal serious complaints was 12.54 working days and non-serious complaints was 20.53 calendar days, which exceeded the negotiated measure of 3 and 14 days, respectively.	Cal/OSHA should determine the cause of the extended response time to complaints and implement corrective action to ensure that complaints are responded to timely.	FY 2021-01
FY 2022-02	In the fatality and catastrophe case files reviewed in FY 2021, 12 of 59 (20%) did not contain an OSHA 170 Fatality and Catastrophe Investigation Summary.	Cal/OSHA should ensure that the OSHA 170 Fatality and Catastrophe Investigation Summaries are maintained in the fatality and catastrophe case files.	FY 2021-02
FY 2022-03	The average number of serious, willful, repeat, or unclassified (SWRU) violations issued was 0.64 (SMM 5a) violations per inspection. This was below the lower end of the FRL range (1.42 violations per inspection).	Cal/OSHA should determine the underlying cause for the low number of serious, willful, repeat, and unclassified violations, and implement corrective actions.	FY 2021-03 FY 2020-02 FY 2019-02 FY 2018-01 FY 2017-02 FY 2016-04 FY 2015-04 FY 2014-02 FY 2013-03 FY 2012-03 FY 2011-07 FY 2010-07
FY 2022-04	Cal/OSHA's citation lapse time was 89.78 days for safety inspections and 119.03 days (SMM 11) for health inspections. These are above the high end of the FRL ranges of 62.9 days for safety inspections and 79.32 days for health inspections.	Cal/OSHA should establish a plan to work with district and regional managers to improve citation lapse time.	FY 2021-04 FY 2020-03 FY 2019-03 FY 2018-02 FY 2017-03 FY 2016-03

FY 2022-#	Finding	Recommendation	FY 2021-# or FY 2021-OB-#
FY 2022-05	OSHSB's regulations for residential construction fall protection are not at least as effective (ALAE) as OSHA's regulations as required by 29 CFR 1953.5(a).	OSHSB should ensure their standards on residential construction fall protection are ALAE as OSHA's standards.	FY 2021-05 FY 2020-04 FY 2019-04 FY 2018-03 FY 2017-04 FY 2016-01 FY 2015-01 FY 2014-01
FY 2022-06	State Plan-initiated rulemaking promulgated standards on commercial diving are not ALAE as OSHA's standard.	California's commercial diving standard should be updated to ensure it is ALAE as OSHA's standard.	FY 2021-06 FY 2020-OB-03 FY 2019-OB-03 FY 2018-OB-01
FY 2022-07	DLSE does not have an approved whistleblower investigations manual to ensure that its policies and procedures are ALAE as OSHA's.	DLSE should complete the whistleblower investigation manual to ensure that its policies and procedures are ALAE as OSHA's.	FY 2021-07 FY 2020-05 FY 2019-05 FY 2018-04 FY 2017-05 FY 2016-09 FY 2015-09 FY 2014-08 FY 2013-09 FY 2012-11 FY 2011-35

Appendix B – Observations Subject to Continued Monitoring
FY 2022 California Division of Occupational Safety and Health Follow-up FAME Report

Observation # FY 2022-OB-#	Observation# FY 2021-OB-# or FY 2021-#	Observation	Federal Monitoring Plan	Current Status
FY 2022-OB-01	FY 2021-OB-01 FY 2020-OB-05 FY 2019-OB-05	Retaliation case files lacked the required documentation such as final signatures on settlement agreements, correspondence between DLSE and the parties, evidence of review by a supervisor, letters of designation, complaint summaries, interview summaries, rebuttal interviews, medical information not protected, notification of dual file right or other documents required to be in the retaliation case file.	OSHA will monitor the lack of required documentation during quarterly meetings with DLSE. OSHA also suggests for DLSE to use CLP 02-03-009 as a guide when maintaining ECF outside of California's database for tracking retaliation complaints, or provide OSHA read-only access into the database for any future reviews.	Continued

Observation # FY 2022-OB-#	Observation# FY 2021-OB-# or FY 2021-#	Observation	Federal Monitoring Plan	Current Status
FY 2022-OB-02	FY 2021-OB-02 FY 2020-OB-06 FY 2019-OB-06	There is no clear evidence that DLSE investigates retaliation for reporting workplace injuries and illnesses. Instead DLSE refers the complainants to the Division of Workers' Compensation (DWC).	During quarterly meetings, OSHA will monitor to ensure that complaints of retaliation are being screened, according to the document provided by DLSE, and that the reporting of workplace injuries and illnesses are investigated under the grant.	Continued



Appendix C - Status of FY 2021 Findings and Recommendations
FY 2022 California Division of Occupational Safety and Health Follow-up FAME Report

FY 2021-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
FY 2021-01	The average time to initiate an inspection for formal serious was 12.54 working days and non-serious complaints was 20.53 calendar days, which exceeded the negotiated measure of 3 and 14 days, respectively.	Cal/OSHA should determine the cause of the extended response time to complaints and implement corrective action to ensure that complaints are responded to timely.	<p>Progress is expected during the upcoming fiscal year after taking the following measures:</p> <ul style="list-style-type: none"> • Continue the Division's robust hiring efforts for enforcement staff, including both existing CSHO vacancies and new positions allocated for the state's 2022-2023 fiscal year. This includes efforts to advertise existing positions and to request additional positions in future fiscal years. • Run UPA reports weekly, for each district office, to identify assigned inspections which have not been opened promptly. • For each complaint, referral, or report of injury/illness assigned for inspection, a meeting will be required between the Senior Safety Engineer or Senior Industrial Hygienist and the assigned CSHO within the first 20 days after receipt, in order to review case progress, to identify and assist individual CSHOs who are having difficulty opening inspections in a timely manner and to efficiently manage overall caseload. 	Not Complete	Open 02/01/2023

FY 2021-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
FY 2021-02	In the fatality and catastrophe case files reviewed, 12 of 59 (20%) did not contain OSHA 170 Fatality and Catastrophe Investigation Summaries.	Cal/OSHA should ensure that the OSHA 170 Fatality and Catastrophe Investigation Summaries are maintained in the fatality and catastrophe case files.	The Division expects to correct or significantly improve this during the upcoming fiscal year after finalizing a change to the Division's Policy and Procedures update as follows: <ul style="list-style-type: none"> • Revise written policy to ensure that Regional Managers sign all Fatality and Catastrophe Investigation Summaries. • Re-assess whether Fatality and Catastrophe Investigation Summaries are being included in case files no fewer than 60 days after policy change. 	Not Complete	Open 02/23/2023
FY 2021-03	The average number of serious, willful, repeat, or unclassified (SWRU) violations issued was 0.80 (SAMM 5a) violations per inspection. This was below the lower end of the FRL range (1.42 violations per inspection).	Cal/OSHA should determine the underlying cause for the low number of serious, willful, repeat, and unclassified violations, and implement corrective actions.	Progress is expected during the upcoming fiscal year after taking the following measures: <ul style="list-style-type: none"> • Analyze the effect of California-specific provisions on this measurement, including statutory and regulatory provisions regarding employer knowledge and penalty levels. • Update and re-issue list, created for CSHOs, of violations commonly found to be serious. • Determine whether any of the listed violations required additional training to ensure that CSHOs can identify the hazards in the field. Continue to provide training on hazard classification to all professional enforcement staff during the "Orientation to Enforcement" and "Inspection 	Not Complete	Open 02/01/2023

FY 2021-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
			<p>Techniques and Legal Aspects” classes, and during specialized classes.</p> <ul style="list-style-type: none"> • Continue practice by Cal/OSHA management of tracking the number of S/W/R violations to determine whether further corrective actions are needed. 		
FY 2021-04	Cal/OSHA’s citation lapse time was 89.78 days for safety inspections and 119.03 days (SMM 11) for health inspections. These are above the high end of the FRL ranges of 62.9 days for safety inspections and 79.32 days for health inspections.	Cal/OSHA should establish a plan to work with district and regional managers to improve citation lapse time.	<p>Progress is expected during the upcoming fiscal year after taking the following measures:</p> <ul style="list-style-type: none"> • Continue the Division’s extensive hiring efforts. • Continue practice of having District Managers review “Open Inspection” report, including the “Citation Pending” section, when meeting with CSHOs monthly to review all open inspections and develop strategies to complete them timely. • Analyze outliers with extended lapse times in order to identify methods to reduce lapse time. • Enforcement’s main office, District, Region, and Program Offices will continue to monitor SAMMs and other management reports to track the progress of citation lapse time. 	Not Complete	Open 02/01/2023
FY 2021-05	OSHSB’s regulations for residential construction fall protection are not at least as effective (ALAE) as OSHA’s	OSHSB should ensure their standards on residential construction fall protection are ALAE as OSHA’s standards.	OSHSB continues to be significantly impacted by vacancies and the pandemic. However, this regulation has been assigned as a high-priority project to a Senior Safety Engineer. Engagement with the Department of Finance in the fourth	Not Complete	Open 02/7/2023

FY 2021-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
	regulations as required by 29 CFR 1953.5(a).		<p>quarter of 2021 resulted in a second alternative approach being developed for the fiscal analysis. Engagement with OSHA staff in late 2021 and early 2022 resulted in changes to the regulatory text of the draft rulemaking proposal. The new draft language was shared with Advisory Committee members on August 2, 2022, and has resulted in renewed engagement by impacted industry stakeholders, notably surrounding probable impacts to California's residential housing construction costs. OSHSB staff will continue to work with OSHA and industry stakeholders to address concerns as the rulemaking proposal advances to the Labor and Workforce Development Agency and the Office of Administrative Law (OAL) for initial approval. Once initial approval is granted, OAL will publish the notice of proposed rulemaking in the California Regulatory Notice Register and it will proceed to OSHSB for public hearing, Board consideration and adoption.</p>		
FY 2021-06	State Plan-initiated rulemaking promulgated standards on commercial diving are not ALAE as OSHA's standard.	California's commercial diving standard should be updated to ensure it is ALAE as OSHA's standard.	<p>August 12, 2022, OSHA sent OSHSB a letter stating it considers the commercial diving standards not ALAE and requested a response by October 1, 2022. OSHSB staff are currently researching the issue and will reply by the October deadline. The commercial diving standards were</p>	Not Complete	Open 02/07/2023

FY 2021-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
			last updated in 2021 in response to a previous OSHA ALAE concern. During that rulemaking process, OSHA provided comments and all ALAE issues were responded to in the Final Statement of Reasons. OSHSB staff are currently researching the issue and will determine if additional rulemaking is needed.		
FY 2021-07	DLSE does not have an approved whistleblower investigations manual to ensure that its policies and procedures are ALAE as OSHA's.	DLSE should complete the whistleblower investigation manual to ensure that its policies and procedures are ALAE as OSHA's.	The high number of vacancies in DLSE continued to experience during fiscal year 2022, combined with the challenges posed by the COVID-19 crisis and turnover in key leadership positions, affected its performance in this area. However, DLSE acknowledges the importance of completing the whistleblower investigation manual. DLSE formed a working group that met regularly from January to May 2022 to complete a draft that is modeled after OSHA's whistleblower investigation manual to ensure that DLSE's policies and procedures are ALAE as OSHA's. The whistleblower manual is currently under review with DLSE's Legal unit. It will then be sent to the CA Labor Commissioner for review. DLSE will send the manual to OSHA for final review and approval.	Not Complete	Open 02/01/2023

Appendix D – FY 2022 State Activity Mandated Measures (SAMM) Report
FY 2022 California Division of Occupational Safety and Health Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Time to Initiate SERIOUS Complaint Inspections (Average Number of Work Days (federal calendar) to Initiate Serious Complaint Inspections)	8.60	3	The SAMM 1A measure is different for California than for other state plans. The measure and further review level are negotiated by OSHA and the State Plan.
1b	Time to Initiate OTHER-THAN-SERIOUS Complaint Inspections (Average Number of Calendar Days to Initiate Other-Than-Serious Complaint Inspections)	17.57	N/A	The SAMM 1B measure is different for California than for other state plans. This measure is for informational purposes only and is not a mandated measure.
2a	Time to Initiate SERIOUS Complaint Investigations (Average Number of Work Days (federal calendar) to Initiate Serious Complaint Investigations)	18.92	1	The SAMM 2A measure is different for California than for other state plans. The measure and further review level are negotiated by OSHA and the State Plan.
2b	Time to Initiate OTHER-THAN-SERIOUS Complaint Investigations (Average Number of Calendar Days to Initiate Complaint Investigation)	25.18	N/A	The SAMM 2B measure is different for California than for other state plans. This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not	0	0	The further review level is fixed for all State Plans.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
	obtained			
5a	Average number of violations per inspection with violations by violation type (SWRU)	0.64	+/- 20% of 1.77	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.12 for SWRU.
5b	Average number of violations per inspection with violations by violation type (other)	2.26	+/- 20% of 0.90	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.72 to 1.08 for OTS.
6	Percent of total inspections in state and local government workplaces	6.46%	+/- 5% of 5.19%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4.94% to 5.45%.
7a	Planned v. actual inspections (safety)	4,827	+/- 5% of 4,475	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4,251.25 to 4,698.75 for safety.
7b	Planned v. actual inspections (health)	1,625	+/- 5% of 1,300	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,235 to 1,365 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$8,422.98	+/- 25% of \$3,259.35	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,444.51 to \$4,074.19.
	a. Average current serious penalty in private sector (1-25 workers)	\$5,985.00	+/- 25% of \$2,145.46	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,609.10 to \$2,681.83.
	b. Average current	\$8,385.94	+/- 25% of	The further review level is based on a

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
	serious penalty in private sector (26-100 workers)		\$3,818.56	three-year national average. The range of acceptable data not requiring further review is from \$2,863.92 to \$4,773.20.
	c. Average current serious penalty in private sector (101-250 workers)	\$10,468.49	+/- 25% of \$5,469.60	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,102.20 to \$6,837.00.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$11,060.04	+/- 25% of \$6,725.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$5,044.34 to \$8,407.23.
9a	Percent in compliance (safety)	21.95%	+/- 20% of 32.25%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.80% to 38.70% for safety.
9b	Percent in compliance (health)	32.01%	+/- 20% of 44.42%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.54% to 53.30% for health.
10	Percent of work-related fatalities responded to in one workday	87.93%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	76.67	+/- 20% of 54.58	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 43.66 to 65.50 for safety.
11b	Average lapse time (health)	78.09	+/- 20% of 69.03	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.22 to 82.84 for health.
12	Percent penalty retained	92.84%	+/- 15% of 69.97%	The further review level is based on a three-year national average. The range of acceptable data not requiring

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
				further review is from 59.47% to 80.47%.
13	Percent of initial inspections with worker walk-around representation or worker interview	99.97%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	N/A*	N/A*	This measure is not being reported for FY 2022. Please see note below.
15	Percent of 11(c) complaints that are meritorious	N/A*	N/A*	This measure is not being reported for FY 2022. Please see note below.
16	Average number of calendar days to complete an 11(c) investigation	N/A*	N/A*	This measure is not being reported for FY 2022. Please see note below.
17	Percent of enforcement presence	0.87%	+/- 25% of 1.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.23% to 2.05%.

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D are pulled from the State Activity Mandated Measures (SAMM) Report in OIS run on November 14, 2022, as part of OSHA's official end-of-year data run.

*Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2022